

NO. 43687-6-II

COURT OF APPEALS, DIVISION II
OF THE STATE OF WASHINGTON

In re the Matter of:

DAGMAR Q. KNIGHT,

A vulnerable adult/Appellant,

Tor K. Knight,

Appellant,

v.

Eric Knight,

Respondent.

**APPELLANT DAGMAR KNIGHT AND TOR KNIGHT'S REPLY
BRIEF**

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TABLE OF CONTENTS

I. FACTS ON REPLY	iv
II. LEGAL ARGUMENT	5
A. Eric Knight Never Supported His Petition With Live Testimony Thus The Court's Order On Revision Is Reviewed De Novo.....	5
B. Clear, Cogent, and Convincing Standard of Proof Affords Due Process Where Petition Is Contested and Not Supported By Any Objective Investigative Findings.....	7
C. Fact-finding Hearing Mandatory Where Alleged Vulnerable Adult Objects to Restraints.....	12
D. The Trial Court Made No Effort To Limit The Restraints to Those Acceptable to Dagmar Knight.....	19
E. Imposed Restraints Invade Tor Knight's Home, and Are Unconstitutionally Restrictive	21
F. Dagmar and Tor Knight Object To Eric Knight Prejudicing Her Case With Extrinsic Evidence Outside the Record	24
III. CONCLUSION.....	24

TABLE OF ATHORITIES

Cases

<i>Allied Daily Newspapers of WA v. Eikenberry</i> , 121 Wn.2d 205, 848 P.2d 1258 (1993).....	20
<i>Bellevue v. Hellenthal</i> , 144 Wn.2d 425, 28 P.3d 744 (2001)	24
<i>Eggleston v. Pierce County</i> , 148 Wn.2d 760, 64 P.3d 618 (2003).....	23
<i>Endicott v. Saul</i> , 142 Wn. App. 899, 176 P.3d 560 (2008).....	11
<i>Goldsmith v. DSHS</i> , 169 Wn. App. 573, 584-5, 280 P.3d 1173 (2012) ...	17

<i>Hecker v. Cortinas</i> , 110 Wn. App. 865, 867, 43 P.3d 50 (2002).....	6
<i>Hill v. Cox</i> , 110 Wn. App. 394, 41 P.3d 495 (2002).....	24
<i>In re Detention of Danforth</i> , 173 Wn.2d 59, 264 P.3d 783 (2011).....	22
<i>In re Detention of Thorell</i> , 149 Wn.2d 724, 72 P.3d 708 (2003).....	20
<i>In re Guardianship of Way</i> , 79 Wn. App. 184, 901 P.2d 349 (1995).....	25
<i>In re Marriage of Moody</i> , 137 Wn.2d 979, 976 P.2d 1240 (1999).....	5
<i>In re Orange</i> , 152 Wn.2d 795, 100P.3d 291 (2004).....	22
<i>In re Pers. Restraint of Young</i> , 122 Wn.2d 1, 857 P.2d 989 (1993).....	20
<i>Kraft v. DSHS</i> , 145 Wn. App. 708, 716, 187 P.3d 798 (2008).....	8
<i>Perez v. Garcia</i> , 148 Wn. App. 131, 198 P.3d 539 (2009).....	5
<i>Schultz v. Western Farm Tractor Co.</i> , 111 Wn. 351, 190 P. 1007 (1920)	18
<i>Seattle Times Co. v. Ishikawa</i> , 97 Wn.2d 30	20
<i>Stanley v. Illinois</i> , 405 U.S. 645, 92 S. Ct. 1208 (1972).....	19
<i>State v. Momah</i> , 167 Wn.2d 140, 217 P.3d 321 (2009).....	23
<i>Trummel v. Mitchell</i> , 156 Wn.2d 653, 131 P.3d 305 (2006)	23
<i>ZDI Gaming, Inc. v. State ex rel. Wash. State Gambling Com'n</i> , 151 Wn. App. 788, 214 P. 3d 938 (2009).....	24

Statutes

RCW 11.88.010(2).....	19
RCW 11.88.045	12
RCW 11.88.045(3).....	11

RCW 11.88.090	12
RCW 18.135	16
RCW 18.88A.....	16
RCW 18.88B.....	16
RCW 2.24.050	4, 6
RCW 34.05	11
RCW 74.24.135	13
RCW 74.34	passim
RCW 74.34.005	22
RCW 74.34.063	10
RCW 74.34.067	10
RCW 74.34.067 (2).....	10
RCW 74.34.130	20, 23
RCW 74.34.135	7, 19
RCW 74.34.135 (1).....	7
RCW 74.39	15, 16
RCW 74.39.007 (2).....	16
RCW 74.39.050	16
RCW 74.39.050(2)(d)	16
RCW 74.39.050(2)(e)	16

Constitutional Provisions

U.S. Const. 4th Amend	25
Wash. Const. art. 1 § 7	25

I. FACTS ON REPLY

Dagmar Knight has always expressed her unconditional love for her son Tor Knight with faithful financial and personal support. CP 34-41, 114. Tor's physical and mental disabilities, have offended others, but not her. CP 115. She remains his devoted mother. CP 120. She defends and protects him. CP 114, CP 90. She and her husband planned for his care, to include providing him a home on the family estate. CP 114, 131. For years, Tor has reciprocated, responding to his mother's needs daily. CP 115. He too defends and protects his mother. CP 118, 120.

For many years, they have thrived together. CP 120. Dagmar Knight never sought help getting away from Tor. CP 114, 120. She did not respond to Eric Knight's letters to her to distance herself from Tor. CP 32. She did not fear Tor and he did not harm her. CP 121, 124. The state rejected Eric's allegations of neglect after an investigation, finding his "alleged neglect and financial exploitation did not occur." CP 127. Dagmar and Tor interacted daily at the family estate without incident for months while Eric hired a law firm to pursue a court order without the state's involvement to separate the two without their consent. CP 6 - 33. Neither of them asked for his help. CP 125. Dagmar never asked for help despite daily contact with family. CP 48, 53. After the state rejected him, and after the court commissioner rejected him, Eric finally convinced a

trial court without a fact-finding hearing to enter his order. CP 59-61. The court made its decision based primarily upon Tor's mental illness and his past criminal history. CP 61. There were no findings that Tor ever physically abused or harmed his mother. CP 60, 235. There was no evidence of a recent threat. The financial matters were a non-issue because the guardianship proceedings were underway, as had been encouraged by the court commission when he dismissed the petition. CP 18, CP 34. The court's ruling destroyed the connection between Dagmar and Tor. RP 20 Aug. 8th, 2012. The order displaced Tor from his home, the home his parents set up for him. RP 21-22 Aug. 8th, 2012. Tor Knight remains incarcerated for violating the order his brother put in place. Dagmar Knight lives waiting for his release, anticipating future opportunities to continue to express her love and support for Tor. CP 237.

Eric Knight corrupts the record on appeal by arguing and referencing facts never before the court. Dagmar Knight moves to strike the evidence not in the record by separate motion.

Eric Knight claims to have had power of attorney over his mother from the date of his father's death. In support of his contention, he cites to his mother's declaration, CP 114, wherein she expresses her grief and upset over Eric's actions to isolate her and disenfranchise Tor. Resp't Br. 2. She did not recognize Eric as her attorney-in-fact when he took action

against Tor. Indeed she revoked her consent when she learned of Eric's actions that she did not approve. CP 233-234. She found Eric to be "sadistic." Id. She made her decision to revoke her power of attorney on her own without undue influence before an attorney of her choosing. CP 232, 234.

Eric Knight relies upon his brother's criminal history and mental illness to invoke fear that Dagmar Knight risks becoming a victim. Resp't Br. at 2, 3. The record lacks any evidence that Dagmar feared Tor or wanted protection from him. Eric ignores his mother's wishes and further refuses to acknowledge Tor has been Dagmar's primary support system since Wayne Knight died. CP 118. Eric relies heavily on Tor's criminal history, which does not show any propensity of violence towards his mother. His criminal history concerns events that occurred years earlier. CP 29. Tor and his mother have lived in close proximity for essentially Tor's entire life. Eric's disruption of her status quo harmed her. CP 114, 115. Tor did not.

Eric Knight did not offer any medical testimony from any health care providers familiar with his mother. Instead, he produced under seal the report of a psychologist he hired. CP 1 - 9. The psychologist relied exclusively on the declarations Eric gave her from his petition for a protective order. The examiner conducted the examination at the direction

of Eric in the home of one of Eric's declarants. Eric did not provide the examiner access to any independent witnesses. CP 9. Dagmar expressed her reluctance to the examiner. CP 2. The examiner was unable to confirm any incident where Tor harmed or threatened his mother. This psychologist was never cross examined.

The only facts before the trial court on revision were the facts presented on paper to the court commissioner. As mandated by statute, the revision hearing was not a fact-finding hearing, but a review of the records and any order entered. RCW 2.24.050. Dagmar and Tor Knight were the prevailing party before the commissioner. RP 60-61. When the commissioner dismissed Eric's petition they had no reason to request a fact finding hearing. The facts presented were not sufficient to support a petition over their objections. On revision, Dagmar and Tor Knight stayed away from the hearing, keeping their distance from Eric, but their attorneys were present. Contrary to Eric's position, their attorneys did recommend a fact-finding hearing. It is factually and procedurally incorrect for Eric to claim a fact finding hearing was not requested. Even the trial court questioned whether it was needed. CP 22 June 15th, 2012. Eric argued it was not. Dagmar and Tor argued it was. RP 21-22 August 3, 2012 (Reconsideration), RP 62, 65 June 15, 2012 (Revision). Given Dagmar's objections to the protective restraints, the trial court erred when

it upset the status quo without fact finding. It further erred, when it imposed the most restrictive possible restraints without evidence of any actual threat.

II. LEGAL ARGUMENT

A. *Eric Knight Never Supported His Petition With Live Testimony Thus The Court's Order On Revision Is Reviewed De Novo*

A protection order entered on the record without a fact finding hearing is reviewed de novo: “where the live testimony does not form a basis or partial basis for the commissioner’s decision, the Superior Court’s review of the record is de novo.” *Perez v. Garcia*, 148 Wn. App. 131, 198 P.3d 539 (2009). A motion for revision is subject to de novo review at the appellate level. *In re Marriage of Moody*, 137 Wn.2d 979, 976 P.2d 1240 (1999).

Eric Knight incorrectly argues for an abuse of discretion standard when he never supported his petition with any live testimony. Resp’t Br. at 10. The case he cites involves appellate review of a domestic violence protection order entered by the court after hearing live testimony offered by the petitioner. *Hecker v. Cortinas*, 110 Wn. App. 865, 867, 43 P.3d 50 (2002). After taking testimony from the petitioner, his current wife, and his ex-wife who was the respondent, the trial court in *Hecker* entered a permanent protection order against the ex-wife.

Here, the trial court did not hear any testimony. Eric Knight never offered any because his petition was dismissed at the first hearing. On revision, the court instructed him to leave the courtroom because he was disruptive. RP 36 June 15th, 2012. When the court asked about the need for an evidentiary hearing, Eric's attorney said that the court did not need an evidentiary hearing and urged the court to make a decision on the paper record. CP 22 June 15th, 2012 ("It's up to the Court. The Court can decide it from affidavits, if you have enough information").

Dagmar Knight never had the opportunity to offer any live testimony because the petition was dismissed. The commissioner granted her the relief she requested. Dagmar was home with Tor when Eric was moving to revise the dismissal of his petition. RP 5 June 15th, 2012. She could not testify on revision, as a revision is limited to de novo review of the underlying record. RCW 2.24.050.¹ At the revision hearing and later on reconsideration, Tor's attorney and Dagmar's attorney urged the court to consider an evidentiary hearing before reversing on the record and altering the status quo. RP 21-22 August 3, 2012 (Reconsideration), RP 62, 65 June 15, 2012 (Revision). Dagmar Knight clearly objected to any protective order, which should have triggered the trial court setting the

¹ On revision, Eric Knight argued for and offered additional evidence citing the same *Way* case that he cites in his brief on appeal. At the same time, Eric Knight objected to any and all facts or evidence not before the commissioner when offered by Dagmar Knight or Tor Knight. RP 6-8, 23-24, 36, 38

matter over for a formal fact-finding hearing. CP 114, RCW 74.34.135 (1). The trial court entered a protective order solely on the paper record. RP 60-61 June 15th, 2012. There are no findings of fact or trial testimony for this court to defer to the trier of fact. The facts have never been tried. This court reviews the record in this case de novo.

B. Clear, Cogent, and Convincing Standard of Proof Affords Due Process Where Petition Is Contested and Not Supported By Any Objective Investigative Findings

Eric Knight argues he can disrupt the status quo of his mother's life by a mere preponderance of evidence. Dagmar Knight disagrees. She expects any court intervention that restrains her abilities to act independently and to parent her dependent and disabled son to require clear, cogent, and convincing proof. Eric Knight never offered clear, cogent, and convincing evidence to justify altering her status quo. Eric Knight took over his mother's home; he restrained her access to her own money; he restrained her from contact with people of her own choosing by cutting off her phone service, and he destroyed her relationship with Tor Knight with whom she is mutually dependent upon for support, love, affection and assistance. Eric left Tor homeless, and ultimately in jail, without any appreciation that Tor's incarceration crushed Dagmar.

Dagmar Knight believes the trial court violated her due process

rights when it revised the commissioner's ruling over her objections and entered protective restraint that she opposed. She wants the protective order stricken and the petition dismissed with prejudice.

At the first hearing, the commissioner properly dismissed the petition and protected Dagmar Knight's financial assets in the least restrictive manner, which was through deference to the guardianship action. RP 49 March 8, 2012. When the trial court revised the commissioner's ruling, the trial court exceeded its authority because the trial court lacked clear, cogent, and convincing evidence to alter her status quo over her objections. Eric Knight could not and did not offer any evidence that Tor Knight ever hurt their mother despite Tor residing at the family estate in close contact daily with his mother for years.

Eric Knight argues he should have the same preponderance standard as DSHS even though he has no investigatory authority to develop and offer objective evidence. Resp't Br. 12, citing to *Kraft v. DSHS*, 145 Wn. App. 708, 716, 187 P.3d 798 (2008). Eric Knight should have a higher standard of proof than the Department of Social and Health Services (DSHS) has in administrative proceedings. He has no medical or other expertise on the issues pertaining to abuse and neglect of a vulnerable adult. And, he has a direct conflict in the outcome. He wants to control the money and property as guardian, and not be inconvenienced

by his brother.

In *Kraft*, DSHS assigned an Adult Protective Services (APS) investigator to investigate a report from the supervisor of a residential facility for disabled adults. A resident complained to the supervisor about a caregiver's comments. The investigator conducted an investigation and ultimately concluded the caregiver had mentally abused the complaining vulnerable adult. The caregiver appealed the adverse agency determination. The administrative hearing was governed by an administrative rule, which sets the standard of proof as a preponderance standard. *Kraft*, at 715, citing to WAC 388-71-01255. The caregiver argued due process required more. The court disagreed. The court distinguished the unlicensed caregiver's case from the administrative cases involving licensed professionals.

Less due process was required because the caregiver did not risk loss of a professional credential. *Kraft* at 801 and 802, citing to *Nguyen* and *Ongom*. Eric Knight relies upon the same licensing issue to argue his preference that he offer proof by a mere preponderance. The licensing point, however, is of no relevance here where none of the involved parties are licensed professionals or caregivers regulated by any state agency.

The reason *Kraft* case is distinct from this case and not applicable here is because *Kraft* is an agency case where due process (an

investigation and hearing) is built into the agency proceedings. In this court proceeding, there is no due process with any agency that precedes court intervention. With essentially a week's notice, the court completely alters the status quo of Dagmar Knight's life without taking any testimony to support any findings of fact to limit her freedom, or Tor's freedom.

This case did not begin with a founded investigation by a state agency against Tor Knight. In fact just the opposite, APS did open an investigation and found that Eric Knight's allegations of neglect and financial exploitation by Tor Knight were unsubstantiated. CP 127. APS ruled "It is more likely than not that the alleged neglect and financial exploitation did not occur." CP 127, CP 124.

APS investigations are governed by statute. RCW 74.34.063, RCW 74.34.067. Of significance, a department investigation must include an interview of the person who is supposed to be the vulnerable adult. In addition, the investigator has an affirmative duty to interview any available independent sources of relevant information and report such information to the hearing officer. RCW 74.34.067 (2). APS did its job and found no evidence of neglect or financial exploitation by Tor Knight.

Unhappy with the findings of APS, Eric Knight bypassed any further administrative due process and filed his petition on his own in court over his mother's objections. He did not schedule or agree to a fact-finding

hearing. In an administrative matter, there is a formal adjudicative hearing governed by the Administrative Procedure Act. RCW 34.05. This was the procedure followed in the *Kraft* case. Ms. Kraft was afforded a hearing where a record of live testimony was developed following the investigation. She had the opportunity to cross examine all witnesses who testified against her. In this third party action, the court hears the motion to revise and changes the outcome and status quo for five years without taking any testimony and without reviewing any investigative findings that must include independent sources of relevant information.

This matter is also distinct from *Kraft* because there is no statutory or regulatory mandate regarding the standard of proof. The statute is silent. Thus, this court can articulate the applicable standard without deference to any legislative consideration of the issue.

This case came before the court on a contested petition with supporting written declarations from both sides. This process can be compared to a contested guardianship proceeding where the standard of proof is clear, cogent, and convincing evidence. RCW 11.88.045(3) and *Endicott v. Saul*, 142 Wn. App. 899, 176 P.3d 560 (2008). This level of due process exists in guardianship cases where the ward is appointed two advocates, a guardian ad litem and an attorney. RCW 11.88.045 and RCW 11.88.090. In a VAPA proceeding where the ward is not afforded a

GAL or an attorney, the higher standard of proof is even more important. The trial court erred when it entered the protection order without clear, cogent, and convincing proof that Eric Knight's petition met the statutory requirements.

C. Fact-finding Hearing Mandatory Where Alleged Vulnerable Adult Objects to Restraints

Dagmar Knight assigns error to the trial court's decision to issue a protective order over her objections without due process. She contends the record does not establish she was a "vulnerable adult" or that her son Eric was an "interested person." Eric Knight disagrees, but does not rely upon the record to support his position. Instead, Eric Knight asks this court to rely upon after acquired evidence not in the record. This court should strike his impermissible offer of proof, and rule that the trial court erred when it entered a permanent five year order over Dagmar Knight's objections without a fact-finding hearing. The trial court was obligated to set a hearing to take testimony to support any factual findings that Dagmar Knight was a "vulnerable adult" and that Eric Knight was an "interested person" before imposing permanent restraints.

The Legislature suggests that in cases like this where the petition is filed by someone other than the alleged vulnerable adult and the alleged vulnerable adult does not want all or part of the protection sought in the

petition the court has two choices, deny the petition or set an evidentiary hearing. RCW 74.24.135. On revision, the trial court did neither. Eric Knight never proved his right to any restraints. Instead, he insisted upon life changing restraints that precipitated the destruction of his mother and brother's relationship such that they both decompensated. Now, Eric Knight relies upon their deteriorated status post restraint to cure his earlier lack of evidence. Later acquired evidence does not cure Eric Knight's violations of his mother's due process rights.

1. Record Lacks Evidence That Dagmar Knight Was "Vulnerable"
 - a. Dagmar Knight Cared for Herself Prior to Imposition of Restraints

Eric Knight argues his mother was a vulnerable adult because she is over sixty and is not able to care for herself functionally, mentally, or physically. Resp't Br. at 15. The evidence he argues to support his opinion is primarily his own. *Id.*

CP 274 is Eric Knight's declaration. He describes his efforts to control his mother to include taking away her phone. He also enviously complains that "My mother cannot distinguish true from false at this state and has and will lie to protect Tor." His testimony offers no evidence that Dagmar Knight is unable to care for herself.

CP 283 is again Eric Knight's own declaration. He complains that

his mother “does not want to deal with the issues the Trust takes care of” and that he does not want Tor to “loot” it. Eric complains that his brother was on the family property and he called the police because he wanted him arrested for violating the restraining order, not for harming their mother. He suggests his brother is a threat to law enforcement, not Dagmar. Tor fears law enforcement because of his previous encounters where he has been injured, primarily due to his mental illness.

CP 79 is Eric Knight’s declaration wherein he states his mother is “small and frail.” He says she is upset over Eric’s actions and his attempts to restrain Tor. He says nothing about Tor harming her.

CP 325 is a portion of the court commissioner’s decision to deny the petition. The court explains that there were some concerns about “how Tor treated his mother after her cancer surgery”, but nothing showing Dagmar Knight was a “vulnerable adult.” In fact, the court commissioner decided she was not vulnerable: “It really is about the brothers. I am not persuaded that Ms. Knight is a vulnerable adult that requires a separate order protecting her at this point.”

CP 10-11 is a report from a “psychologist” whose credentials or opinions have never been subjected to cross examination or scrutiny. How Eric knows her, or why he selected her, and how much he paid her for the report and her opinions are all unknown.

Of notable irony, Eric Knight cites to his mother's dependence upon Tor to show his mother's vulnerability, while petitioning to take away Tor's support. Resp't Br. at 15. The record shows Dagmar Knight was able to function with her son Tor's help around the house and with the property, with Tor driving her where she needed to go, and with Tor helping her with her medical care. Dagmar Knight did not require restraint from her son Tor.

Dagmar Knight was not unable to care for herself when Eric Knight filed his petition. The court erred when it imposed a protection order with restraints that she objected to without a fact finding hearing or expert testimony regarding her ability to care for herself.

b. Dagmar Knight Not Self Directing Care Through
A Personal Aide Who Performed Health Care Tasks

A person who self directs her care and receives health care services from a personal aide under the provisions of RCW 74.39 may be considered a vulnerable adult who requires protection. Eric Knight argues he can hire someone who has no recognized health care credentials to reside in his mother's home and that the presence of this person in the home proves his mother is a vulnerable adult in need of protection. Resp't Br. at 16. "Angie" the person who Eric Knight hired to reside in his mother's home did not testify. She did not offer a declaration. She did

not set forth her credentials for the court. There is absolutely no evidence that Angie provided “health care services” as is required under RCW 74.39.007 (2) for Angie to qualify as a personal aide under the statute defining “vulnerable adult.”

Eric Knight relies exclusively on references in argument that Angie was a “caregiver” who lived at Dagmar Knight’s home. Resp.’t Br. at 16. He fails to show any evidence in the record that Angie provided health care services or that she had any credentials to do so. Eric Knight ignores the plain language of the statute that exempts public paid personal aides from credentialing by DOH, but not privately paid health care service providers. RCW 74.39.070. Private pay providers must have a health care credential to provide health care tasks. RCW 18.135, RCW 18.88A, and RCW 18.88B. Health care tasks are medical, nursing, or home health services that enable the person to maintain independence, personal hygiene, and safety in her own home. RCW 74.39.050. A personal aide must be performing health care tasks as directed by Dagmar Knight with the consent, approval, and input of her physician. RCW 74.39.050(2)(d). A personal aide provides health care services, not homemaker services. RCW 74.39.050(2)(e).

The record is silent as to these critical facts. The court did not have the requisite evidence to find Dagmar Knight vulnerable under RCW

74.34.020(17)(g). The court needed to hear from “Angie” and it needed to hear from Dagmar Knight’s doctor. The court should have denied the motion to revise and it should have dismissed the petition.

2. Eric Knight Self Interested

Eric Knight compares this matter to a case where the court upheld a department finding of mental abuse involving a 98 year old man and his son who were fighting over money. *Goldsmith v. DSHS*, 169 Wn. App. 573, 584-5, 280 P.3d 1173 (2012). The problem with Eric’s reliance on the *Goldsmith* case is that there are notable factual and procedural distinctions. First, the cited case includes an extensive factual history developed at a hearing where multiple care providers and witnesses testified to their direct observations. The record showed repeated instances where the son badgered his father for hours to the point that his father was crying and upset to the point of non-compliance with his medical regimen. In one instance, the father threatened to call the police to remove his son.

This case lacks even a remote comparison to the facts or procedural posture of the *Goldsmith* case. Here, there is no factual testimony from anyone. The written declarations do not contain any evidence that Tor Knight ever upset his mother or in any way harmed her. In fact, the records show the person who badgers Dagmar Knight about money and

isolated her from any outside communication is Eric Knight, not Tor.

Eric argues Tor pressured his mother to give him \$56,000.00 for personal expenditures. Resp't Br. at 18. The record is silent as to any pressure Tor applied to his mother. The record shows Dagmar Knight had no objection to giving Tor money. She supported him. She always has.

Eric also argues Tor threatened family and friends. Resp't Br. at 18. Eric does not show that Dagmar Knight wanted to see these "family and friends" or that Tor kept her from making or initiating contact with family and friends. Resp't Br. at 18. Ms. Pollack testifies that she spoke with Dagmar daily, despite Tor's presence. CP 53. She also spoke "often" with Chris Llewellyn, a second cousin. CP 48.

Dagmar Knight understands Tor. She recognizes he is disabled and suffers from mental illness; and despite his difficult personality, she chose to put him first before other distant family or friends. As a mother, she has an absolute right to do so. *Schultz v. Western Farm Tractor Co.*, 111 Wn. 351, 190 P. 1007 (1920) ("Doubtless the legal duty of a parent to support his normal children ceases at the age of majority, but the rule is not the same with respect to his defective children, whether the defect be mental or physical. To these he owes a continuing obligation of support, which ceases only when the necessity for support ceases.") *See also*, *Stanley v. Illinois*, 405 U.S. 645, 92 S. Ct. 1208 (1972). The trial court

failed to recognize her right to parent her disabled and dependent son. The trial court also failed to recognize Dagmar Knight's dependence upon her son for his support in nurturing her. The record clearly shows Eric Knight was not the one supporting his mother. He was not involved with her daily, and he was not the one taking her home from the hospital or driving her to appointments or checking in on her at home. The trial court erred when it deferred to Eric and excluded Tor.

D. The Trial Court Made No Effort To Limit The Restraints to Those Acceptable to Dagmar Knight

Eric Knight fails to recognize the emphasis in the statute on fashioning any relief consistent with the express wishes of the alleged vulnerable adult. RCW 74.34.135. Eric Knight claims only DSHS has this duty of least restrictive alternatives. Not so. The statute makes it clear that the court must consider the wishes of the person who is to be protected. This deference to the person is consistent with guardianship proceedings where the court may order only limitations or restrictions as are necessary for such person's protection and assistance. RCW 11.88.010(2).

Even if the Act were completely silent as to least restrictive alternatives, the common law recognizes the principle as an effective means for curtailing prejudice and abuse of constitutional rights. See,

Allied Daily Newspapers of WA v. Eikenberry, 121 Wn.2d 205, 848 P.2d 1258 (1993)(“the proposed method for curtailing open access must be the least restrictive means available for protecting the threatened interests...”); *Seattle Times Co. v. Ishikawa*, 97 Wn.2d 30, (“There are a variety of less restrictive alternative methods for effectively protecting the additional interest asserted after trial...”); *In re Detention of Thorell*, 149 Wn.2d 724, 72 P.3d 708 (2003) citing to *In re Pers. Restraint of Young*, 122 Wn.2d 1, 857 P.2d 989 (1993)(“Statute may specify and restrict consideration of least restrictive alternatives available to sex predators without violating equal protection”).

Here the trial court imposed a permanent five year order of restraint without consideration of any less restrictive alternatives. The court went beyond the perimeters of RCW 74.34.130 when it decided to ban Tor from the property rather than limiting the restraints to a shorter duration or a more finite area. The statute contemplates excluding the respondent from the vulnerable adult’s residence or prohibiting contact for a specified period or from coming within a specified distance. Here, the trial court made it impossible for Tor to reside in the home his mother and father established for him for five years. His home sits on twenty-six acres near, but not right next door to his mother’s home. For twenty years, they co-existed. The order is so draconian in restraint, Tor can not be in his home.

The trial court made no arrangements to assure Dagmar Knight that her son was safe from harm and that he could see her with oversight or supervision. The court never considered or explored Angie the caregiver's abilities to protect Dagmar Knight. The court never gave Dagmar Knight the opportunity to select a neutral caregiver or provider who could supervise her contact with both her sons. The protective order destroyed the status quo in the worst way possible. The court chose one son over the other, a result Dagmar Knight and her husband went to considerable lengths to protect against during their lifetime when it established the family trust with specific provisions to support Tor. The court made its decision without deference to the limitations of Tor Knight to live independently from his mother or her from him. Dagmar and Tor Knight requests this court invalidate the protective order and restore their rights.

E. Imposed Restraints Invade Tor Knight's Home, and Are Unconstitutionally Restrictive

The court ordered restraints force Tor to stay 1000 feet away from his mother's home and off the entire 26 acre Lakebay family estate. CP 85 He is precluded from coming within 1000 feet of either driveway entrance to the property, which includes access to his home. Eric argues he can seek restraints in excess of and without regard to the policy principles of RCW 74.34 that favor self determination. He argues least

restrictive restraints is a concept that applies only to the state, and not to individuals like him. CP 24, citing RCW 74.34.005(“The department must provide protective services in the least restrictive environment appropriate and available to the vulnerable adult.”) He insists the better approach is to impose the most restrictive restraints, and then shift the burden to his brother to prove he does not have a mental illness or a criminal record and that he will no longer be the same person he has been for years before he can return to his own home. RP 27, August 3rd, 2012. Eric essentially argues he can punish his brother for being a schizophrenic whose mental illness led to past incarcerations. This state’s level III sex offenders have more rights than Eric recognizes for his brother. *In re Detention of Danforth*, 173 Wn.2d 59, 264 P.3d 783 (2011)(Civil commitment of a sex offender post incarceration requires evidence of a “recent overt act”). The principle of least restrictive restraints is not limited to the department. Least restrictive restraints is a well recognized constitutional doctrine. *In re Orange*, 152 Wn.2d 795, 100P.3d 291 (2004)(Right to a public trial requires any closure be no broader than necessary to protect the identified overriding interest); *State v. Momah*, 167 Wn.2d 140, 217 P.3d 321 (2009)(Curtaining open access to public trial must be the least restrictive means available for protecting the threatened interests). Anti-harassment law embraces the same concept;

any restraint must be justified by the facts and not expanded to restrain harassment that never occurred. *Trummel v. Mitchell*, 156 Wn.2d 653, 131 P.3d 305 (2006). Restraints that anticipate behavior that has yet to occur, rather than to correct past specific instances of harassment are not permitted. *Id.* at 670.(Distance restraints expanded to include other residents, board members, and staff was an abuse of discretion.)

The relief Eric demands goes well beyond the relief described in RCW 74.34.130. None of the relief described allows for the court to order a respondent out of his home. Yet, that is precisely what Eric accomplished. CP 129 (Tor's arrest for being in his own home). A respondent may be restrained from a vulnerable adult's residence, but not his own home. Dagmar and Tor Knight have protected life, liberty, and property interests at stake. Tor Knight has state and federal protected rights to be free from unreasonable governmental intrusion into his home or private affairs. U.S. Const. 4th Amend. and Wash. Const. art. 1 § 7. He also has the right to be compensated where government goes too far in the exercise of its police powers. *Eggleston v. Pierce County*, 148 Wn.2d 760, 64 P.3d 618 (2003). The court ordered restraints in this case violate constitutional doctrine of least restrictive restraint. Tor Knight should be able to return to his home, free from governmental interference or restraint.

***F. Dagmar and Tor Knight Object To Eric Knight Prejudicing
Her Case With Extrinsic Evidence Outside the Record***

Eric Knight attaches multiple documents from the separate guardianship action he initiated to his brief on this appeal. Resp't Br. at Appendixes A through D. He does so in violation of the rules of appellate procedure. Here, Eric Knight has not sought permission of the court to append documents to his brief. Each of his appendices should be stricken and disregarded pursuant to Dagmar Knight's motion to strike filed separately. Dagmar and Tor Knight argue on their motion to strike that the *Way* case cited by Eric to add information to this Court's review should not be allowed. Thus, this Court is asked to rely upon the record before the appellate Court.

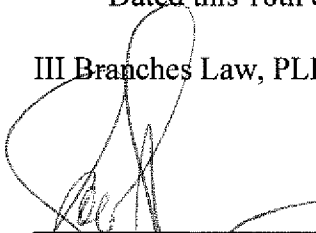
III. CONCLUSION

Dagmar and Tor Knight respectfully request the court rule in their favor. They ask that the protective order be stricken and Eric Knight's petition be dismissed with prejudice.


Dated this 18th day of March, 2012 at Fircrest, WA.

III Branches Law, PLLC

Comfort Davies & Smith, PS



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Declaration of Service

I, Jonathan Tretheway, make the following declaration:

I am over the age of 18, a resident of Pierce County, and not a party to the above action. On March 18, 2013, I caused to be served true and correct copies of the foregoing: Dagmar Knight and Tor Knight's Reply Brief, and this Declaration of Service by Electronic mail through the Washington State Court of Appeals Div. II filing system as follows:

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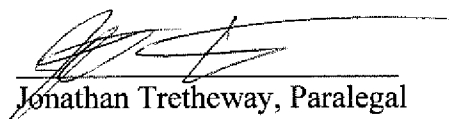
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I certify under penalty of perjury under the laws of the state of Washington that the foregoing is true and correct.

Dated this 18th day of March 2013 at Fircrest, WA.


Jonathan Tretheway, Paralegal

III BRANCHES LAW

March 18, 2013 - 4:28 PM

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